IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5423 OF 2006

Bharamnath Dada Khot
& Ors. .. Petitioners.

vs.

Subhash Vishnupant Kanzar. .. Respondent.

Mr. P.S. Dani for petitioners.
Mr. Amit Borkar for Respondent.

CORAM : A.P. DESHPANDE, J.
DATE : 10th November, 2006.

P.C.

. This petition is filed by the legal representatives of the judgment debtor wherein the respondent is the decree holder. The respondent instituted a suit for specific performance of contract and the same came to be decreed in favour of the respondent. Aggrieved by the judgment and decree passed by the trial Court, the petitioner carried a regular First Appeal in the Court of District Judge, Kolhapur. The District Judge modified the judgment and decree passed by the trial Court and directed the plaintiff to deposit a sum of Rs. 63,500/- within 15 days from the date of the

decree towards remaining consideration to be paid to the appellant. It then directed the following :-

> " Defendant (Legal Representatives on record) do execute the deed of sale of the suit property in favour of the plaintiff after obtaining permission for sale from the Competent Authority under the Urban Land Ceiling Act."

And thereafter issued further directions for delivery of possession of the suit property. Lastly it ordered that if permission for sale is refused by the competent authority the defendant do pay to the plaintiff a sum of Rs. 7500/- which constitutes the amount of earnest money. The modified judgment and decree is passed by the District Judge on 18.1.2005. The same has attained finality as it was not called in question thereafter. The respondent had filed darkhast proceedings after the trial court decreed the suit before the executing court.

2. The petitioners submit that they moved the competent authority under the Urban Land Ceiling Act by an application dated 6.9.2005 seeking permission for sale/transfer of the land but the authority declined to grant the permission vide communication dated 11.10.2005. Acting on the said alleged refusal, the petitioners moved the executing court

to permit them to deposit the sum of Rs. 7500/- (amount of refund of earnest money) together with interest. The said application was moved at Exhibit-26. Pending the said application, the respondent/defendant filed two applications, one for amendment of execution petition so as to bring it in conformity with the judgment and decree passed by the Appellate Court, as the original Darkhast was filed immediately after the trial Court passed the judgment and decree. In the amendment application, amongst other things, the respondent prayed for issuing appropriate directions with a view to make a proper application for seeking permission of the competent authority under the Urban Land Ceiling Act and the other application filed by the respondent before the executing court was for seeking a direction against the judgment debtor to produce relevant documents before the Court so as to enable moving of an appropriate application before the competent authority in adherence to the procedure prescribed. The executing court has allowed the two applications filed by the respondent. The effect of the orders passed by the executing court is that the judgment debtors will have to produce relevant documents in the court so that a proper application could be made to the competent authority with a view to seek permission to sale/transfer the land. It is the case of the petitioner that the permission was already rejected by the Competent Authority whereas

it is the case of the respondent that no orders have been passed on the application purported to have been moved by the petitioners. It is submitted by the respondent that when a permission is to be sought under section 26 of the Urban Land Ceiling Act, both the parties viz., the transferor and transferee are supposed to make a joint application supported by the documents. In the instant case, the application is claimed to have been moved by the judgment-debtor himself alone and hence it is contended by the respondent that no application, in law, was ever made by the petitioners. Even from the perusal of the so-called refusal order passed by the Competent Authority dated 11.10.2005 it is clear that the authority wanted to examine the conditions subject to which the land was allotted to the judgment debtor by the government. The communication dated 11.10.2005 does not tantamount to rejection of the application moved by the Judgement Debtor but gives an impression that the same is kept pending subject to ascertainment of the conditions of the lease. The executing court has held that there is no rejection of the permission by the competent authority and hence proceeded to direct the judgment debtor to produce the relevant documents so that the appropriate orders could be passed with a view to seek permission of the competent authority.

3. In the above factual background, two submissions are made by the learned counsel for the petitioners and the same are to the following effect:-

(1) That there is no provision in the Code of Civil Procedure which empowers the Court to appoint an officer with a view to submit a proposal and obtain permission from the competent authority, and

(2) That the executing court has travelled beyond the scope of the decree by passing the impugned orders.

4. The learned counsel for the petitioners invited my attention to the provision contained in order 21 rule 34 and contended that the said provision is the sole repository of the power of the Court in regard to execution of documents or endorsement of negotiable instrument. In his submission, the power of the Court in that regard is restricted to what is specifically permitted by Order 21 Rule 34. Taking support from the language used in rule 34, the learned counsel for the petitioners submit that in the absence of any other provision akin to one contained in rule 34, the executing court could not have issued direction to the judgment debtor to produce the documents with a view to seek permission of the competent authority. He submits that a Commissioner

cannot be appointed for signing of an application or for filing of an affidavit, etc. Per contra, the learned counsel for the decree holder has submitted that the executing court can do all such things that are in furtherance of the execution of the decree. In the submission of the learned counsel, the power of the executing court cannot be narrowly constructed but need to be construed liberally and in the absence of a specific provision to meet a contingency the Court is empowered to take recourse of section 151 of CPC. The decree holder has placed reliance on the judgment of the Supreme Court in the case of Babu Lal vs. M/s. Hazari Lal Kishori Lal and others, reported in (1982) SCC 525 to press the contention that the decree for specific performance of contract includes doing things incidental to be done by one party or another to complete the said transaction, the rights and obligations of the parties in such a matter being governed by section 55 of the Transfer of Property Act. Reliance is further placed on the judgment of the Division Bench of this Court in the case of T.A. Darbar and Company and others vs. Union Bank of India, reported in (1995)(1) Mh. L.J. page 610 which supports the order passed by the executing court granting amendment to the execution proceedings.

5. I have perused the impugned orders passed by the executing court. The two orders passed in favour of the decree holder aims to achieve one of the

directions contained in the decree which is in relation to obtaining of the permission of the competent authority, as the same is condition precedent for execution of the sale deed. As the judgment debtor is not cooperating in the matter the executing court was justified in directing the judgment debtor to produce the documents so that by appointing an officer of the Court a proper application in the prescribed form can be made to the competent authority so that the permission could be sought. It is obvious that the judgment debtor would be interested in seeking rejection of the application for transfer/sale of the property and hence no fault can be found with the order passed by the trial Court which is only intended to achieve the object of submission of a full proof application to the competent authority. As the executing court has found that no application has been legally made to the competent authority, the question of rejection thereof does not arise. The view taken by the executing court is legal and proper and if this be so, the application moved by the judgment debtor at Exhibit-26 is premature in asmuch as under the said application the judgment debtor wants to deposit the amount of refund of earnest money. The said contingency will arise only in case the competent authority refuses the permission and not otherwise.

6. For the reasons set out hereinabove, I am of

the clear view that the orders passed by the executing court are in furtherance of execution of the decree for specific performance and the same is in furtherance of the cause of justice which does not call for any interference. The petition as such, stands rejected.

(A.P. Deshpande, J.)